

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)	
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Digital Broadcast Copy Protection)	MB Docket No. 02-230
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COMMENTS OF THE WALT DISNEY COMPANY
AND THE ABC TELEVISION NETWORK

The Walt Disney Company and The ABC Television Network (together, “Disney/ABC”) hereby submit these comments in the above-captioned proceeding. Disney/ABC fully supports and joins the Joint Comments of the Motion Picture Association of America (“MPAA”) in their entirety. Disney/ABC submits these comments to stress that the course of action that Disney/ABC has adopted to date to provide high quality digital programming, including high definition programming, during the initial digital television transition is unsustainable and untenable for the long term unless and until an acceptable broadcast redistribution protection scheme is adopted and implemented.

INTRODUCTION

The Walt Disney Company is a member of MPAA and – in that capacity – fully supports MPAA’s comments. In addition, ABC, which is wholly-owned by Disney, also fully supports and is joining MPAA’s comments. This separate filing by Disney/ABC stresses and responds to several discreet points raised by the FCC in the Notice of

Proposed Rulemaking.¹ Specifically, in Paragraph 3 of the Notice, the FCC asks a series of questions relating to the need for a broadcast protection regime and “whether quality digital content is now being withheld because of concerns over the lack of digital broadcast copy protection.”² If content is being withheld, the FCC asks commenters to address “[t]o what extent would the absence of a digital broadcast copy protection scheme and the lack of high quality digital programming delay or prevent the DTV transition”?³ The FCC also seeks comment on the “nature and extent of the piracy concerns expressed by content providers.”⁴

**DISNEY/ABC IS A LEADER IN PROVIDING HIGH QUALITY DIGITAL
PROGRAMMING, BUT THE BROADCAST FLAG IS NEEDED FOR
DISNEY/ABC TO MAINTAIN THIS ROLE**

In the absence of adequate broadcast redistribution protection, Disney/ABC currently is walking a very fine line with respect to the provision of digital television programming, and especially high definition programming. On the one hand, Disney/ABC fully supports the FCC’s and Congress’s efforts to speed the digital transition. Disney/ABC has spent over \$100 million on the digital transition. Disney/ABC is a leader in providing digital programming and believes strongly that these efforts will help speed consumer interest in the digital transition. This season, ABC is airing an average of fourteen and a half hours of high definition programming in prime-time per week, including ABC’s scripted comedies and dramas, as well as the Saturday Night Movie and the Wonderful World of Disney. In addition, ABC recently announced that this season it will be airing in high-definition the Super Bowl, games of the National

¹ *In the Matter of Digital Broadcast Copy Protection*, FCC 02-231, released Aug. 9, 2002 (*Notice of Proposed Rulemaking* in MB Docket No. 02-230).

² *Id.* at para. 3.

³ *Id.*

Basketball Association finals and the Stanley Cup finals. Next season, ABC will broadcast “Monday Night Football” in high definition. Clearly, ABC has made a significant contribution toward the goals of speeding the digital transition.

On the other hand, Disney/ABC is seriously concerned about and has fully committed its resources to finding a much-needed mechanism to prevent unauthorized redistribution of over-the-air broadcast television. Disney has been working on digital content protection generally for well over five years through negotiations with 5C and other licensing entities, including two years of intense discussions on digital broadcast protection, beginning with 5C then expanding to the larger tri-industry Copy Protection Technical Working Group. Disney/ABC has argued – with increasing concern -- that the broadcast flag needs to be implemented and recognized in order to protect the digital programming that is now being placed in the digital television supply chain.

Until now, because the digital transition has been in its early stages, Disney/ABC has been willing to provide its digital content via an over-the-air signal, even though the content redistribution issues remain unresolved. Given that so few consumers now own digital television sets capable of receiving Disney/ABC digital programming, Internet redistribution has not yet become an acute problem. However, as everyone expects (and hopes), at some point soon the pace of the transition will accelerate markedly. Indeed, many policymakers have spoken of a “tipping point,” after which the digital transition will take off rapidly. And, Disney/ABC shares Chairman Powell’s optimism that the DTV transition will begin to accelerate exponentially in the next year or so.⁵

⁴ *Id.*

⁵ Remarks of Chairman Michael K. Powell, Chairman, Federal Communications Commission, at the Association for Maximum Television DTV Update Conference, entitled “Digital Television: The Time is Now,” October 22, 2002, Washington DC (available at www.fcc.gov).

At the same time as digital television penetration is increasing, new distribution networks that facilitate connections to the Internet, such as wireless (WiFi) and other wireless broadband connections, are also gaining popularity and penetration in the marketplace. As we approach this convergence, continuing in Disney/ABC's current course of action will become commercially untenable and – absent broadcast content redistribution protection – Disney/ABC will be forced to reassess the wisdom of making high quality digital programming and especially high definition programming available on broadcast television. If Disney/ABC is faced with no choice but to move its high quality digital content away from free broadcast toward protected conditional access systems like cable or satellite, many viewers would be deprived of the opportunity to enjoy the advances made possible by digital television and the public interest benefits of digital television will not be realized.

Moreover, Disney and ABC do not produce or own all of the programs aired on ABC. Instead, ABC negotiates with other programmers to license many programs that ultimately are broadcast on ABC. As the pace of the digital transition increases, and if there is no content redistribution protection, it will become increasingly difficult for ABC to obtain rights to some high quality content for broadcast as opposed to cable or satellite.

Ironically, some of the same industry players that have not supported implementation of the broadcast flag are the most optimistic about the increasing pace of the digital transition. For example, the Consumer Electronics Association states that the adoption rate for DTV is now surpassing that of the personal computer, the VCR, and the color television.⁶ The Consumer Electronic Association also predicts a market increase

⁶ Chart entitled "DTV In Perspective – The DTV adoption rate surpasses that of the PC, the VCR and the Color TV," available at www.ce.org.

in digital television sales from 2002 through 2006, with an estimated 10.5 million sales in 2006.⁷

Recent patterns of piracy indicate that unauthorized redistribution via the Internet and other networks will accelerate rapidly. Indeed, one need only look at the rapidly-increasing pace of music and movie piracy to see how quickly piracy accelerates. For example, a study by Viant Media and Entertainment concludes that somewhere between 300,000 and 500,000 films are being downloaded each day.⁸ As for music piracy, the rise of Napster occurred in an alarmingly short time and experts have stated that “music file sharing and Napster usage appear to have created a significant and detrimental impact on retail music sales.”⁹ Fortune magazine reported that last year, sales of CDs were down 5% and, for the first time, blank CD sales outnumbered sales for recorded CDs.¹⁰

As for broadcast television programming, already, episodes of the popular ABC program “Alias”, and the Touchstone Television¹¹ program “Scrubs”, are showing up on file-sharing websites such as KaZaA. A search of KaZaA conducted this week resulted in 325 hits for “Scrubs” and 271 hits for “Alias.” Given the rapid increase in music and movie piracy, the only reasonable conclusion is that file-sharing of broadcast programming will increase exponentially. Thus, Disney/ABC’s redistribution concerns are real and imminent.

⁷ Chart entitled “Projected Sales 2002-2006”, available at www.ce.org.

⁸ Report entitled “The Copyright Crusade,” at p. 16, by Andrew C. Frank, CTO, Viant Media and Entertainment (available at www.viant.com).

⁹ “Report of Michael Fine,” at p. 2, expert retained by the Recording Industry Association of America (available at <http://www.riaa.com/PDF/fine.pdf>).

¹⁰ “The New Napsters,” Fortune, August 12, 2002; see also “Online File Sharing Thrives in USA,” detailing a comScore Network report concluding that “sales of recorded music in the USA have continued to decline sharply for three consecutive quarters” (available at www.mrns.com/drno/news1980.hrm).

¹¹ Touchstone Television is owned by Disney.

Some have argued that the fact that Disney/ABC is airing content in high definition demonstrates that Disney/ABC does not perceive Internet redistribution to be a legitimate threat. That is not the case. Those who make these arguments ignore the fact that, consistent with the Commission's digital transition objectives, Disney/ABC clearly is providing this programming – at this early stage – to jump start the digital transition. These arguments only further harm and delay industry efforts to work together to solve this problem now before the “tipping point” in the transition is reached and Disney/ABC has to reconsider its plans.

Just last summer, various industry players were on the verge of adopting a consensus watermark for DVDs, but failed to embrace such a consensus watermark.¹² It has been reported that the proposed watermark could have had broader applications beyond DVDs, to perhaps digital broadcast protection.¹³ Clearly, the relevant industries are unable to solve the broadcast redistribution problem without government intervention. Thus, the FCC should move ahead and implement the broadcast flag.

CONCLUSION

Disney/ABC submits that the Commission should adopt the proposal provided in the MPAA Joint Comments, and move quickly to resolve one of the last sticking points in the digital television transition. Time is of the essence, and Disney/ABC requests that the FCC implement the broadcast flag so that Disney/ABC can continue to be a leader in providing high quality digital programming.

¹² “Microsoft, Intel Reject DVD Watermark Proposal,” National Journal's Technology Daily, August 7, 2002; “Macrovision Decries Lack of DVD Video Watermark,” Audio Week, November 4, 2002.

Respectfully submitted,

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¹³ “DVD-Watermark Remains in Limbo Past Aug. 1 Deadline,” Consumer Electronics, August 5, 2002.